

Department of Energy

§ 625.5

specify in a Notice of Sale which of such terms and conditions, or financial and performance responsibility measures, shall apply to a particular sale of SPR petroleum; and, he may specify any revisions in such terms, conditions and measures, and any additional terms, conditions and measures which shall be applicable to that sale, that are consistent with the SPR Drawdown Plan adopted on December 1, 1982.

(b) *Acceptance by offerors.* All offerors must, as part of their offers for SPR petroleum in response to a Notice of Sale, agree without exception to all contractual provisions and financial and performance responsibility measures which the Notice of Sale makes applicable to the particular sale.

(c) *Award of contracts.* No contract for the sale of SPR petroleum may be awarded to any offeror who has not unconditionally agreed to all contractual provisions and financial and performance responsibility measures which the Notice of Sale makes applicable to the particular sale.

(d) *Contract documents.* The terms and conditions which the Notice of Sale makes applicable to a particular sale may be incorporated into a contract for the sale of SPR petroleum by reference to the Notice of Sale.

§ 625.4 Publication of the Standard Sales Provisions.

(a) *Publication.* The Standard Sales Provisions shall be published in the FEDERAL REGISTER and in the Code of Federal Regulations as an appendix to this rule.

(b) *Revisions of the Standard Sales Provisions.* The Standard Sales Provisions shall be reviewed periodically and republished in the FEDERAL REGISTER, with any revisions.

(c) *Notification of applicable clauses.* The Notice of Sale will specify, by referencing the FEDERAL REGISTER and the Code of Federal Regulations in which the latest version of the Standard Sales Provisions was published, which contractual terms and conditions and contractor financial and performance responsibility measures contained or described therein are applicable to that particular sale.

§ 625.5 Failure to perform in accordance with SPR Contracts of Sale.

(a) *Ineligibility.* In addition to any remedies available to the Government under the Contract of Sale, in the event that a purchaser fails to perform in accordance with applicable SPR petroleum sale contractual provisions, and such failure is not excused by those provisions, the Headquarters Senior Procurement Official, at his discretion, may make such purchaser ineligible for future awards of SPR petroleum sales contracts.

(b) *Determination of ineligibility.* No purchaser shall be made ineligible for the award of any SPR sales contract prior to notice and opportunity to respond in accordance with the requirements of this subsection.

(1) Upon the determination that a purchaser is to be considered for ineligibility, the purchaser shall be sent by certified mail return receipt requested, the following:

(i) Notification that the Headquarters Senior Procurement Official is considering making the purchaser ineligible for future awards;

(ii) Identification of the SPR sales contract which the purchaser failed to comply with, along with a brief description of the events and circumstances relating to such failure;

(iii) Advice that the purchaser may submit in writing for consideration by the Headquarters Senior Procurement Official in determining whether or not to impose ineligibility on the purchaser, any information or argument in opposition to the ineligibility; and

(iv) Advice that such information or argument in opposition to the ineligibility must be submitted within a certain time in order to be considered by the Headquarters Senior Procurement Official, such time to be not less than 21 days.

(2) After elapse of the time period established under paragraph (b)(1) of this section for receipt of the purchaser's response, the Headquarters Senior Procurement Official, at his discretion, and after consideration of the purchaser's written response, if any, may make the purchaser ineligible for future awards of SPR petroleum sales contracts. Such ineligibility shall continue for the time period determined

Pt. 625, App. A

10 CFR Ch. II (1–1–10 Edition)

by the Headquarters Senior Procurement Official, as appropriate under the circumstances.

(3) The purchaser shall be notified of the Headquarters Senior Procurement Official's decision.

(c) *Reconsideration.* Any purchaser who has been excluded from participating in any SPR sale under paragraph (a) may request that the Headquarters Senior Procurement Official reconsider the purchaser's ineligibility. The Headquarters Senior Procurement Official, at his discretion, may reinstate any such purchaser to eligibility for future competitive sales.

**APPENDIX A TO PART 625—STANDARD
SALES PROVISIONS**

Index

Section A—General Pre-Sale Information

- A.1 List of abbreviations
- A.2 Definitions
- A.3 Standard Sales Provisions (SSPs)
- A.4 Periodic revisions of the Standard Sales Provisions
- A.5 Sales Notification List (SNL)
- A.6 Publication of the Notice of Sale
- A.7 Penalty for false statements in offers to buy SPR petroleum

Section B—Sales Solicitation Provisions

- B.1 Requirements for a valid offer—caution to offerors
- B.2 Price indexing
- B.3 Certification of independent price determination
- B.4 Requirements for vessels—caution to offerors
- B.5 “Superfund” tax on SPR petroleum—caution to offerors
- B.6 Export limitations and licensing—caution to offerors
- B.7 State of Hawaii access to SPR crude oil
- B.8 Issuance of the Notice of Sale
- B.9 Submission of offers and modification of previously submitted offers
- B.10 Acknowledgment of amendments to a Notice of Sale
- B.11 Late offers, modifications of offers, and withdrawal of offers
- B.12 Offer guarantee
- B.13 Explanation requests from offerors
- B.14 Currency for offers
- B.15 Language of offers and contracts
- B.16 Proprietary data
- B.17 SPR crude oil streams and delivery points
- B.18 Notice of Sale line item schedule—petroleum quantity, quality, and delivery method
- B.19 Line item information to be provided in the offer

- B.20 Mistake in offer
- B.21 Evaluation of offers
- B.22 Procedures for evaluation of offers
- B.23 Financial statements and other information
- B.24 Resolicitation procedures on unsold petroleum
- B.25 Offeror's certification of acceptance
- B.26 Notification of Apparently Successful Offeror
- B.27 Contract documents
- B.28 [Reserved]
- B.29 Procedures for selling to other U.S. Government agencies

Section C—Sales Contract Provisions

- C.1 Delivery of SPR petroleum
- C.2 Compliance with the “Jones Act” and the U.S. export control laws
- C.3 [Reserved]
- C.4 Environmental compliance
- C.5 Delivery and transportation scheduling
- C.6 Contract modification—alternate delivery line items
- C.7 Application procedures for “Jones Act” and Construction Differential Subsidy waivers
- C.8 Vessel loading procedures
- C.9 Vessel laytime and demurrage
- C.10 Vessel loading expedition options
- C.11 Purchaser liability for excessive berth time
- C.12 Pipeline delivery procedures
- C.13 Title and risk of loss
- C.14 Acceptance of crude oil
- C.15 Delivery acceptance and verification
- C.16 Price adjustments for quality differentials
- C.17 Determination of quality
- C.18 Determination of quantity
- C.19 Delivery documentation
- C.20 Contract amounts
- C.21 Payment and Performance Letter of Credit
- C.22 Billing and payment
- C.23 Method of payments
- C.24 Interest
- C.25 Termination
- C.26 Other Government remedies
- C.27 Liquidated damages
- C.28 Failure to perform under SPR contracts
- C.29 Government options in case of impossibility of performance
- C.30 Limitation of Government liability
- C.31 Notices
- C.32 Disputes
- C.33 Assignment
- C.34 Order of precedence
- C.35 Gratuities

Exhibits:

- A—SPR Crude Oil Comprehensive Analysis
- B—SPR Delivery Point Data
- C—Offer Standby Letter of Credit
- D—Payment and Performance Letter of Credit